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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/785,555	02/24/2004	Cary B. Cochenour	040073	8139

7590 01/26/2005

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EXAMINER

STRAIGHTIFF, MICHAEL PAUL

ART UNIT	PAPER NUMBER
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3739

DATE MAILED: 01/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/785,555	COCHENOUR ET AL. eD	
	Examiner	Art Unit	
	Michael P. Straighttiff	3739	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 May 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date <u>05/24/2004</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-5 and 7-20 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent Application Publication No. US 2004/0195227 to Park.

a. In regard to Claim 1, Park discloses “[A] patient activated temperature-controlled surface comprising a floor” (See Park, Figure 5, Reference 55), “a temperature source capable of supplying either heat or cold, or both, to said floor” (See Park, Figure 5, Reference 20; See also Paragraph [0025], Lines 1-7), “an actuator element that is capable of controlling the flow of an electrical current to said temperature source for turning on and off said temperature source” (See Park, Paragraph [0021], Lines 4-5), “wherein said actuator element is activated and deactivated by the presence or absence of the weight of the patient” (See also Paragraph [0029], Lines 1-5).

b. In regard to Claim 2, Park further discloses “wherein said actuator element is capable of allowing or preventing the flow of said electrical current to said temperature source” (See Park, Figure 1, Reference 23).

- c. In regard to Claim 3, Park further discloses “wherein said actuator element is connected to a power source” (See Park, Figure 1).
- d. In regard to Claim 4, Park further discloses “wherein said temperature source is located in juxtaposition to said floor, and wherein said floor allows said heat or cold to pass from said temperature source through said floor and wherein said actuator element is located in juxtaposition to said floor” (See Park, Figures 2 and 5).
- e. In regard to Claim 5, Park further discloses “wherein said actuator element provides an electrical bias” (See Park, Figure 1, Bias to “open circuit”).
- f. In regard to Claim 7, Park further discloses “wherein said actuator element is a pressure sensitive switch” (See Park, Paragraph [0020], Lines 4-5).
- g. In regard to Claim 8, Park further discloses “wherein said switch is a momentary switch” (See Park, Paragraph [0029], Lines 1-5; See also Paragraphs [0034] and [0035]).
- h. In regard to Claim 9, Park further discloses “wherein said temperature source is located beneath said floor” (See Park, Figure 5, Reference 20).
- i. In regard to Claim 10, Park further discloses “wherein said floor is a bed for accommodating the resting of a patient” (See Park, Paragraph [0037], Lines 1-2).
- j. In regard to Claim 11, Park further discloses “wherein said bed is surrounded by at least one wall” (See Park, Figure 5, Reference to upright seat portion).

k. In regard to Claim 12, Park further discloses “wherein said wall has at least one opening that allows for the ingress and egress of the patient in and out of said bed” (See Park, Figure 5, Reference to upright seat portion – Examiner reads lack of wall on three sides of cushion to be “at least one opening that allows for the ingress and egress of the patient”).

l. In regard to Claim 13, Park further discloses “wherein said temperature source includes an adjustable thermostat” (See Park, Paragraph [0027], Lines 1-4).

m. In regard to Claim 14, Park discloses “[A]n animal bed comprising a floor” (See Park, Figure 5, Reference 55), “a temperature source capable of supplying either heat or cold or both to said floor” (See Park, Figure 5, Reference 20; See also Paragraph [0025], Lines 1-7), “and an actuator element that is capable of controlling the flow of an electrical current to said temperature source for turning on and off said temperature source” (See Park, Paragraph [0021], Lines 4-5), “wherein said actuator element is activated and deactivated by the presence or absence of the weight of the animal on the bed” (See also Paragraph [0029], Lines 1-5).

n. In regard to Claims 15-20, the recited method steps are considered inherent in the operation of the device disclosed by Park.

Art Unit: 3739

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
 2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
4. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Application Publication No. US 2004/0195227 to Park as applied to Claim 1 above and in view of U.S. Patent 5,303,485 to Goldston et al.

a. In regard to Claim 6, Park discloses “[A] patient activated temperature controlled surface” (See Claim 1 Rejection). Park further discloses “wherein said actuator element is a pressure sensitive switch”. Park does not explicitly disclose “wherein said actuator element is a transistor”. Goldston et al. teaches the use of a transistor in place of a pressure sensitive switch (See Goldston et al., Column 9, Lines 4-15). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a transistor as taught by Goldston et al. as the actuator disclosed by Park in order to provide a more sophisticated

switching means responsive to the presence or absence of the weight of a patient.

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent No. 4,633,062 to Nishida et al. – Nishida et al. disclose an electric blanket with human body detecting means.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael P. Straighttiff whose telephone number is (571) 272-4774. The examiner can normally be reached on Monday through Friday 8:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

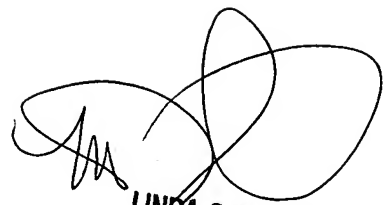
Application/Control Number: 10/785,555

Page 7

Art Unit: 3739

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